

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4903 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PATWA VASANTLAL DAHYALAL

Versus

DY DIST DEVELOPMENT OFFICER

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Appearance:

MR JS YADAV FOR MR YN OZA for Petitioner

Respondent No. 1 & 2 Served.

MS. S.D.TALATI,ASSTT.GP for Respondent No. 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/02/98

ORAL JUDGEMENT

Petitioner before this Court is the former Talati cum Mantri who was serving under respondents nos. 1 and 2 herein. It was alleged that on 7th January, 1981, the petitioner recovered a sum of Rs. 13/- being the amount of travelling allowance from the Gram Panchayat. The

petitioner had wrongly recovered the said amount of Rs. 13/- from the Gram Panchayat. The petitioner, thus, misappropriated Rs. 13/- belonging to the Gram Panchayat. A complaint in this respect was lodged against the petitioner and a criminal case was registered in the Court of the Judicial Magistrate, First Class, Patan. Criminal Case NO. 2583 of 1982 registered against the petitioner was decided on 10th June, 1986. The petitioner was acquitted by the criminal Court. Appeal preferred before this Court by the State Government also failed. Thereafter, disciplinary proceeding was initiated against the petitioner and chargesheet was served on 3rd January, 1989. Pending the disciplinary proceedings, on reaching the age of superannuation, the petitioner retired from service, on 30th June, 1989. After holding disciplinary inquiry, allegation of misappropriation made against the petitioner was held to be proved. Under order dated 21st March, 1992, a sum of Rs. 13/- wrongly recovered by the petitioner from the Gram Panchayat was ordered to be recovered from the petitioner.

2. It appears that pending prosecution, the petitioner was placed under suspension. Thus, the petitioner remained under suspension for the period from 7th July, 1983 till 11th June, 1986. The question of regularization of the period spent under suspension therefore was required to be decided by the competent authority under Rule 152 of the Bombay Civil Service Rules (hereinafter referred to as "the Rules"). Respondent No. 1 herein, under order dated 14th May, 1992, directed that the period spent by the petitioner under suspension be treated as leave without pay and ordered that the subsistence allowance paid to the petitioner during the said period shall be recovered. Feeling aggrieved, the petitioner has preferred this petition and has challenged the order dated 14th May, 1992 (Annexure "C to the petition").

3. Be it noted that the petitioner has not challenged either the order of recovery to be made from him or the finding of guilt recorded against him. The finding of guilt recorded against the petitioner has, therefore, become final. Mr. Yadav, the learned advocate has appeared for the petitioner and has requested that the petitioner be given an opportunity of amending his petition and challenging the order of punishment made on 21st March, 1992. The request should necessarily be rejected. Under order dated 21st March, 1992, all that has been done is Rs. 13/- recovered by the petitioner unlawfully has been ordered to be recovered

back. No other punishment has been imposed against the petitioner. Further, at all if the said order were required to be challenged, the petitioner should have availed of the alternative remedy of statutory appeal provided under the relevant rules. The petitioner, in the year 1998, cannot be permitted to challenge the order made in the year 1992 i.e. after undue delay of six years. Any such amendment would amount to expanding the scope of the petition. The request is, therefore, rejected.

Mr. Yadav has contended that the impugned order dated 14th May, 1992 is vitiated inasmuch as the petitioner was not afforded an opportunity of hearing before the competent authority before the said order was made. He has further contended that the said order made under rule 152 of the Bombay Civil Service Rules is vitiated on account of undue delay also. The petitioner was placed under suspension from 7th July, 1983 to 11th June, 1986. Said period cannot be sought to be regularized six years thereafter i.e. in the year 1992 and that too three years after the retirement of the petitioner from service. He has further submitted that in any view of the matter, the petitioner has suffered enough punishment for misappropriation of Rs. 13/- and no further punishment should be imposed upon the petitioner by seeking recovery of the subsistence allowance paid to the petitioner during the period of his suspension from service. He has submitted that first, the petitioner has suffered punishment by undergoing suspension for more than three years. Second, by recovery of Rs.13/- found to have been misappropriated by the petitioner. Third, by nonpayment of the pension to the petitioner and fourth by non payment of several amounts due to the petitioner as incorporated in the statement Annexure "E" to the petition. He has further submitted that in view of the order of the trial court acquitting the petitioner of the charge and the same having been confirmed in appeal, no disciplinary inquiry ought to have been conducted against the petitioner nor could the finding of guilt have been recorded against the petitioner.

I am afraid, I cannot accept either of the contentions raised by Mr. Yadav. The contention that the petitioner is not being paid the pension does not appear to be true. There is no order made against the petitioner which should deprive him of whole or part of the pension due and payable to him. On the contrary, in view of the interim orders made by this Court, part of which is confirmed by the appellate bench in Letters

Patent Appeal No. 387 of 1982, where the Court has directed that;

"if that is so, disbursement of retirement benefits as directed by the learned Single Judge can be confirmed and we confirm the order of the learned Single Judge in this behalf."

Besides, it is well settled proposition of law that the suspension from service of an employee pending prosecution or disciplinary inquiry cannot be said to be a punishment. Further, if at all any of the dues of the petitioner are not paid, unless there is specific order refusing payment of such dues, the petitioner cannot be said to have suffered the punishment. There is nothing on the record to indicate that the petitioner has made demand in respect of his dues enlisted at Annexure "E" to the petition and the same have been refused. The impugned order dated 14th May, 1992 cannot be said to have been made after undue delay. The provisions contained in Rule 152 of the Rules can be invoked only after the completion of criminal prosecution or the disciplinary action taken against a delinquent. In the present case, after the acquittal of the delinquent in criminal prosecution, departmental inquiry was initiated against him and the order was made on 21st March, 1992. The order made on 14th May, 1992 under Rule 152 of the Rules cannot be said to be an order of punishment. Besides, the order under Rule 152 of the Bombay Civil Service Rules is required to be made as a consequence of the disciplinary action taken against the delinquent. I am, therefore, of the view that no hearing is required to be given to the delinquent before making order under Rule 152 of the Bombay Civil Service Rules. Mr. Yadav's contention that the disciplinary authority could not have recorded the finding of guilt against the petitioner in view of the order of the learned trial Judge in the criminal case is also not well founded. Since there is no challenge to the order of the disciplinary authority holding the petitioner guilty of misappropriation and ordering recovery of Rs. 13/- from the petitioner, such a contention, therefore, is not tenable. Even otherwise, the nature and scope of a criminal case are different from those of a disciplinary proceedings. Strict standard of proof required in a criminal trial does not apply to a disciplinary proceeding. In view of the Judgment of the Supreme Court in case of Nelson Motis vs. Union of India and others (AIR 1992 SC 1981), the contention requires to be rejected.

The petitioner, having been found guilty, the competent authority had to make an order under rule 152 of the Rules in respect of the period of his suspension from service. In the present case, since the petitioner was found guilty of the misappropriation of public money, treatment of the period of suspension from service as leave without pay is fully justified. Note 2 under sub-rule (5) of rule 152 of the Rules provides inter-alia, that;

"Subsistence allowance paid under this rule should be adjusted for recovery from the Government servant when the period of suspension is converted into leave with or without pay."

The recovery ordered under the impugned order is, therefore, in consonance with the provisions contained in rule 152 (5) of the Rules and cannot be interfered with. Petition is, therefore, dismissed. Rule is discharged.

After the above order was dictated and transcribed, Mr. Yadav has moved this Court and has submitted that in fact, the petitioner did preferred appeal against the order dated 21st March, 1992 which was dismissed on the ground of delay. He has further submitted that even against the impugned order dated 14th May, 1992, the petitioner preferred appeal before the District Development Officer. In view of the present writ petition preferred before this Court in the same subject matter, the District Development Officer adjourned the appeal sine die. He has, therefore, submitted that the said appeal is still pending and he may be permitted to withdraw this petition with a view to prosecuting the said appeal and that the appellate authority may be directed to dispose off the appeal expeditiously. I am afraid, I cannot permit the petitioner to withdraw this petition with a view to prosecuting the appeal preferred by him probably before the date of this petition. If the petitioner had already approached the appellate authority, the petitioner ought not to have preferred writ petition under Article 226 of the Constitution of India. Further, in paragraph 9 of the petition, the petitioner has made a categorical declaration that the petitioner had not preferred any other petition or application in the subject matter of the petition. The petitioner has not disclosed the factum of his having appealed before the District Development Officer. Thus, the petitioner is guilty of suppression of material facts as well as of misleading the Court. Ought we know, if the said fact had been disclosed to the Court earlier, petition may not have

been entertained at the admission stage itself. I, therefore, reject the request made by Mr. Yadav. The order relied upon by Mr. Yadav is ordered to be taken on record.

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Vyas